

AMENDED IN ASSEMBLY MARCH 10, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 2106**

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**Introduced by Assembly Member Irwin**

February 17, 2016

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An act to amend ~~Section 17550~~ *Sections 17550, 17550.20, 17550.21, and 17550.37* of the Business and Professions Code, relating to sellers of travel.

### LEGISLATIVE COUNSEL’S DIGEST

AB 2106, as amended, Irwin. Sellers of travel: ~~regulation.~~ *registration.*

Existing law regulates sellers of travel, as defined, and requires their registration with the Attorney General, and makes legislative findings and declarations related to those regulations. *General. Under existing law, the Travel Consumer Restitution Corporation provides restitution to a person aggrieved by the failure of a seller of travel to refund payments for air or sea transportation or travel services, subject to specified restrictions. Existing law requires the Travel Consumer Restitution Corporation to assess, as specified, sellers of travel for the corporation’s operations fund and the Travel Consumer Restitution Fund.*

*Existing law requires sellers of travel to register by filing with the Consumer Law Section specified fees for each location of business and specified information about the seller of travel including its business form, its place of organization, and certain personal identification numbers of each of its owners and principals.*

*This bill would also require sellers of travel to file with the Consumer Law Section, the file number issued to the seller of travel by the Secretary of State.*

*Existing law prohibits the issuance, approval, or renewal of registration of a seller of travel until specified filing and late fees have been paid.*

*The bill additionally would prohibit the issuance, approval, or renewal of registration until the seller of travel has paid any outstanding assessments due to the Travel Consumer Restitution Corporation.*

*Existing law requires the Attorney General to suspend the registration of a seller of travel who fails to make required payments to the Travel Consumer Restitution Corporation or who submits a check in payment of a registration fee or late fee that is not honored by the institution on which it is drawn.*

*The bill would require the Attorney General to suspend the registration of a seller of travel who fails to file with the Consumer Law Section, the file number issued to the seller of travel by the Secretary of State.*

*Existing law restricts refund payments from the Travel Consumer Restitution Fund to persons aggrieved by sellers of travel who, at the time of sale, were paid-up participants in the fund. Under existing law, any person aggrieved who files a claim for payment from the fund thereby waives his or her right to bring an action at law or equity against the seller of travel as to that claim, as specified, unless the seller of travel was not a paid-up participant.*

*The bill would instead allow refund payments to persons aggrieved by sellers of travel who had been paid-up participants at any time during the 12 months previous to the time of sale. Under the bill, any person aggrieved who files a claim for payment from the fund would thereby waive his or her right to bring an action at law or equity against the seller of travel as to that claim, as specified, unless the seller of travel had not been a paid-up participant at any time during the 12 months previous to the time of sale.*

*Existing law exempts from the provisions regulating sellers of travel an individual, natural person who conducts his or her activities in accordance with specified procedures.*

*This bill would also exempt single-member limited liability corporations and "S" Corporations that conduct their activities in accordance with those procedures.*

~~This~~

*The bill would correct an incorrect cross-reference and make other nonsubstantive changes to those legislative findings and declarations: changes.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 17550 of the Business and Professions  
2 Code is amended to read:

3 17550. (a) The Legislature finds and declares all of the  
4 following:

5 (1) Certain advertising, sales, and business practices of sellers  
6 of travel have worked financial hardship upon the people of this  
7 state.

8 (2) The travel business has a significant impact upon the  
9 economy and well-being of this state and its people.

10 (3) Problems have arisen that are peculiar to sellers of travel  
11 business.

12 (4) The public welfare requires regulation of sellers of travel in  
13 order to eliminate unfair advertising, sales, and business practices,  
14 to establish standards that will safeguard the people against  
15 financial hardship, to encourage competition, fair dealing, and  
16 prosperity in the travel business, and to provide certain and reliable  
17 funding for the seller of travel registration program and  
18 enforcement by the office of the Attorney General of this article.

19 (b) It is the intent of the Legislature in enacting this article that  
20 the Department of Justice, to the extent that resources are available,  
21 work together with representatives of the affected business  
22 community to develop sample forms that will, to the maximum  
23 extent possible, enable sellers of travel to comply with the  
24 requirement to provide to persons making payment the information  
25 required by paragraph (1) of subdivision (a) of Section 17550.13,  
26 in a manner that is simplified, efficient, and nonduplicative, and  
27 in a manner that recognizes the particular burdens and situations  
28 that may exist for small sellers of travel in their efforts to comply  
29 with the provisions of that section.

30 SEC. 2. Section 17550.20 of the Business and Professions Code  
31 is amended to read:

1 17550.20. (a) (1) Not less than 10 days prior to doing business  
2 in this state, a seller of travel shall apply for registration with the  
3 office of the Attorney General by filing with the Consumer Law  
4 Section the information required by Section 17550.21 and ~~a paying~~  
5 *the following fees, as applicable:*

6 (A) A filing fee of one hundred dollars (\$100) for each location  
7 from which the seller of travel conducts business. ~~A~~

8 (B) A late fee of five dollars (\$5) per day, up to a maximum of  
9 five hundred dollars (\$500), ~~shall be paid (\$500),~~ for each day  
10 after the time specified by this section until the filing fee and the  
11 information required by Section 17550.21 are received. ~~No~~

12 (2) *A seller of travel may annually renew its registration by*  
13 *making the filing required by Section 17550.21 and paying the*  
14 *filing fees and late fees required by paragraph (1).*

15 (3) A registration shall ~~not be issued or approved~~ *issued,*  
16 *approved, or renewed* until the late fee, ~~and the filing and late fees~~  
17 *for each year the seller of travel operated without being registered,*  
18 *and any outstanding assessments due to the Travel Consumer*  
19 *Restitution Corporation as required by Sections 17550.43 and*  
20 *17550.44 have been paid.* ~~A~~

21 (4) A seller of travel shall be deemed to do business in this state  
22 if the seller of travel solicits business from locations in this state  
23 or solicits prospective purchasers who are located in this state.

24 (b) Registration shall be valid for one year from the effective  
25 date thereof shown on the registration issued by the office of the  
26 Attorney General ~~and may be annually renewed by making the~~  
27 ~~filing required by Section 17550.21 and paying a filing fee of one~~  
28 ~~hundred dollars (\$100) for each location from which the seller of~~  
29 ~~travel conducts business. A late fee of five dollars (\$5) per day,~~  
30 ~~up to a maximum of five hundred dollars (\$500), shall be paid for~~  
31 ~~each day after the time specified by this section until the filing fee~~  
32 ~~and the information required by Section 17550.21 are received.~~  
33 ~~No registration shall be renewed until the late fee, and the filing~~  
34 ~~and late fees for each year the seller of travel operated without~~  
35 ~~being registered, have been paid.~~ *General.*

36 (c) Whenever, prior to expiration of a seller of travel's annual  
37 registration, there is a material change in the information required  
38 by Section 17550.21, the seller of travel shall, within 10 days, file  
39 an addendum updating the information with the Consumer Law  
40 Section of the office of the Attorney General.

(d) (1) Not less than 10 days prior to the transfer or sale of any interest in a seller of travel, the selling or transferring owner shall file with the office of the Attorney General, Seller of Travel Program, a notice of encumbrance, sale, or transfer of ownership, using a form provided for that purpose by the office of the Attorney General. The notice shall provide the information required pursuant to subdivision (d) of Section 17550.21 as to each transferee.

(2) Until the time the notice of encumbrance, sale, or transfer of ownership required in paragraph (1) is filed as required, the selling, encumbering, or transferring owner is responsible for all acts of and obligations imposed by law on the transferee sellers of travel to the same extent as they would have been responsible had there been no transfer, sale, or encumbrance.

(e) (1) The office of the Attorney General shall suspend the registration of ~~any~~ a seller of travel who ~~(1) fails~~ *does any of the following:*

(A) *Fails* to make any payment required pursuant to Article 2.7 (commencing with ~~Section 17550.35~~) or ~~(2) submits~~ *Section 17550.35*).

(B) *Submits* a check in payment of a registration fee or late fee required by this section that is not honored by the institution on which it is drawn. ~~The~~

(C) *Fails to provide the file number issued by the Secretary of State to the seller of travel, as required by subdivision (l) of Section 17550.21.*

(2) The Attorney General shall provide written notice to the seller of travel by first-class mail at the seller of travel's place of business set forth in the registration statement that the seller of travel's registration has been suspended until all fees that are due have been paid. The registration of the seller of travel shall be suspended until all such payments due have been collected.

(f) The Attorney General may, at his or her discretion and subject to supervision by the Attorney General or his or her delegate, contract out all or any part of the processing of registrations required by this section.

(g) This section does not apply to an individual, natural person ~~who~~ *who, or a single-member limited liability corporation or "S" corporation that*, meets all of the following conditions:

(1) Has a written contract with a registered seller of travel to act on that registered seller of travel's behalf in offering or selling

1 air or sea transportation and other travel goods or services in  
2 connection with the transportation.

3 (2) Acts only on behalf of a registered seller of travel with whom  
4 the person *or corporation* has a written contract in the offer or sale  
5 to a passenger of air or sea transportation and other goods or  
6 services in connection with the transportation and sells no other  
7 air or sea transportation or travel services to that passenger.

8 (3) Provides air or sea transportation or travel services that are  
9 offered or sold pursuant to the official agency appointment of the  
10 registered seller of travel with whom the person *or corporation*  
11 has a written contract.

12 (4) Does not receive any consideration for air or sea  
13 transportation or other travel services from the passenger.

14 (5) Requires the passenger to pay all consideration for air or  
15 sea transportation or other travel services directly to the air carrier  
16 or ocean carrier or to the registered seller of travel.

17 (6) Discloses both of the following:

18 (A) The person *or corporation* is acting on behalf of a registered  
19 seller of travel.

20 (B) The name, address, telephone number, and registration  
21 number of the registered seller of travel on whose behalf the person  
22 *or corporation* is acting.

23 The person *or corporation* shall make the disclosures required  
24 by this paragraph in writing to the passenger at the same time the  
25 passenger receives notice under Section 17550.13. If the person  
26 *or corporation* transacts business in this state on the Internet, the  
27 disclosures also shall appear on the home page of the person's *or*  
28 *corporation's Internet* Web site and shall be prominently set forth  
29 in the first electronic mail message sent to the passenger that refers  
30 to the passenger's purchase of air or sea transportation or travel  
31 services.

32 (h) Whenever the Attorney General determines that a registration  
33 application is accurate and complete, the application shall be  
34 processed and a registration certificate shall be issued to the seller  
35 of travel within 21 days.

36 *SEC. 3. Section 17550.21 of the Business and Professions Code*  
37 *is amended to read:*

38 17550.21. Each filing pursuant to Section 17550.20 shall  
39 contain the following information:

1 (a) The name or names of the seller of travel, including the name  
2 under which the seller of travel is doing or intends to do business,  
3 if different from the name of the seller of travel.

4 (b) The seller of travel's business form and place of organization  
5 and, if operating under a fictitious business name, the location  
6 where the fictitious name has been registered. If the seller of travel  
7 does business in California from one or more locations in this state  
8 but does not maintain its principal place of business in this state,  
9 the seller of travel shall state whether it meets the requirements of  
10 paragraph (16) of subdivision (e) of Section 17511.1.

11 (c) The complete street address or addresses of all locations  
12 from which the seller of travel will be conducting business,  
13 including, but not limited to, locations at which telephone calls  
14 will be received from, or made to, passengers or other sellers of  
15 travel. The statement shall designate which location is the principal  
16 place of business.

17 (d) The complete business and residential addresses and  
18 telephone numbers, the driver's license number and state of  
19 issuance or equivalent personal identification, the social security  
20 number, and the date of birth of each owner and principal of the  
21 seller of travel. "Owner" means a person who owns or controls 10  
22 percent or more of the equity of, or otherwise has claim to 10  
23 percent or more of the net income of, a seller of travel. "Principal"  
24 means an owner, an officer of a corporation, a general partner of  
25 a partnership, or a sole proprietor of a sole proprietorship.

26 (e) A statement as to whether the seller of travel, any owner, or  
27 principal, or any other seller of travel owned or managed by any  
28 owner or principal of the seller of travel, or the seller of travel  
29 itself has had entered against that person or entity any judgment,  
30 including a stipulated judgment, order, made a plea of nolo  
31 contendere, or been convicted of any criminal violation. The  
32 statement shall identify the person, the court or administrative  
33 agency rendering the judgment, order, or conviction, the docket  
34 number of the matter, and the date of the judgment, order, or  
35 conviction; where the judgment, order, or record of conviction is  
36 filed; and the nature of the case or judgment. This subdivision does  
37 not require disclosure of marital dissolution, child support, or child  
38 custody proceedings.

1 (f) A copy of the travel certificates, if any, that are or will be  
2 sold, marketed, or distributed to any person or entity by the seller  
3 of travel.

4 (g) The seller of travel shall file with the Attorney General a  
5 signed and dated statement providing the following:

6 (1) The account number of each trust account required by this  
7 article.

8 (2) The name and address of each financial institution at which  
9 the seller of travel maintains a trust account required by this article.

10 (3) Any registration number issued to the seller of travel by the  
11 Airline Reporting Corporation or the International Association of  
12 Travel Agents Network.

13 (4) A consent form consenting to the Attorney General, a district  
14 attorney, or their representatives obtaining directly from the  
15 Airlines Reporting Corporation, International Association of Travel  
16 Agents Network, a seller of transportation, provider of  
17 transportation, provider of travel services, and any financial  
18 institution where passenger funds have been deposited, any  
19 information related to an investigation of a seller of travel's  
20 compliance with this section. The consent form shall be provided  
21 by the Attorney General. If a bond is maintained in lieu of the trust  
22 account, a copy of that bond shall be filed with the Attorney  
23 General.

24 (h) A statement signed by each owner and principal granting  
25 permission to the office of the Attorney General to obtain from  
26 any financial institution or credit union at which any trust account  
27 required by Section 17550.15 is maintained, information relating  
28 to that trust account, as set forth in paragraph (2) of subdivision  
29 (f) of Section 17550.15.

30 (i) The name, address, and telephone number of each person  
31 described in subdivision (g) of Section 17550.20 with whom the  
32 seller of travel contracts.

33 (j) If at the time of registration renewal, no change has occurred  
34 to the information provided in the last filed complete registration  
35 statement and the permission described in subdivision (h) has not  
36 expired, the seller of travel may, instead of filing a registration  
37 statement containing the information required by subdivisions (a)  
38 to (i), inclusive, file a statement attesting to the continued accuracy  
39 of the information in the last filed complete registration statement.



1 The attestation shall be in a form specified by the Attorney General  
2 and verified as described in subdivision (k).

3 (k) The information required by this section shall be verified  
4 by a declaration signed and dated by each owner and principal of  
5 the seller of travel, or in the case of a registered seller of travel  
6 that does business in California, from one or more locations in  
7 California, and that meets the requirements of paragraph (16) of  
8 subdivision (e) of Section 17511.1, by a duly authorized officer  
9 of the corporation, under penalty of perjury pursuant to the laws  
10 of the State of California. The declaration shall specify the date  
11 and location of signing. Upon reregistration by a previously  
12 registered seller of travel, the information required by this section  
13 may be verified by the chief executive officer of a corporation,  
14 managing partner of a partnership, or manager of a limited liability  
15 company.

16 (l) *The file number issued by the Secretary of State to the seller*  
17 *of travel.*

18 *SEC. 4. Section 17550.37 of the Business and Professions Code*  
19 *is amended to read:*

20 17550.37. (a) "Person aggrieved," as used in this article, means  
21 a passenger, as defined in Section 17550.3, located in California  
22 at the time of sale, or a person located in California at the time of  
23 sale who made any payment on behalf of the passenger for air or  
24 sea transportation or travel services, who has sustained a loss as a  
25 result of the failure of a seller of travel to refund payments made  
26 by or on behalf of a passenger as payment for air or sea  
27 transportation or travel services, where a refund is due as a result  
28 of the bankruptcy, insolvency, cessation of operations, or material  
29 failure to provide the transportation or travel services purchased  
30 by the passenger, regardless of whether the passenger or a person  
31 making payment on behalf of the passenger initially contracted  
32 with that seller of travel. "Loss," as used herein, shall be limited  
33 to losses that are incurred in a transaction with a seller of travel  
34 who, at the time of sale, ~~was a paid-up participant in the Travel~~  
35 ~~Consumer Restitution Fund and~~ was registered pursuant to Section  
36 ~~17550.20. 17550.20, and who, at any time during the 12 months~~  
37 ~~previous to the time of sale, had been a paid-up participant.~~  
38 "Person aggrieved" shall not mean or include a passenger, or person  
39 making payment on behalf of a passenger, in a transaction where  
40 the air or sea transportation or travel services are furnished by a

1 business entity that is located and providing transportation or travel  
2 services outside of the United States and is not in compliance with  
3 Article 2.6 (commencing with Section 17550).

4 (b) Any person aggrieved who files a claim for payment from  
5 the Travel Consumer Restitution Fund thereby waives his or her  
6 right to bring any action at law or equity that is against the seller  
7 of travel as to whom the claim is made and arises from the  
8 transaction that is the subject of the claim against the restitution  
9 fund. The claim form required by Section 17550.46 shall include  
10 a clear and conspicuous notice of the waiver.

11 (c) The waiver of rights provided for by subdivision (b) shall  
12 not apply to any claimant whose claim is denied on any of the  
13 following grounds, as set forth in the statement of decision required  
14 by subdivision (d) of Section 17550.47:

15 (1) The seller of travel ~~was not, at the time of sale,~~ *had not been*  
16 *a paid-up participant in the Travel Consumer Restitution Fund,*  
17 *Fund at any time during the 12 months previous to the time of sale,*  
18 as required by subdivision (a).

19 (2) The seller of travel was not, at the time of sale, registered  
20 pursuant to Section 17550.20.

21 (3) The claimant was not located in California at the time of  
22 sale, as required by subdivision (a).